

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FRANCIE MOELLER, et al.,

Plaintiffs,

v.

TACO BELL CORPORATION,

Defendant.

No. C 02-5849 PJH

**ORDER DENYING DEFENDANT'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Defendant's motion for partial summary judgment came on for hearing before this court on November 5, 2008. Plaintiffs appeared by their counsel Timothy Fox, Amy Robertson, and Mari Mayeda, and defendant appeared by its counsel Gregory Hurley and Richard Hikida. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court DENIES the motion.

The court finds the motion largely incomprehensible in that it does not clearly identify which of plaintiff's claims (or perhaps portions of claims) are barred by the statute of limitations, and the factual material regarding the stores to which the argument applies is inconsistent and confusing.

Moreover, the court rejects defendant's interpretation of the applicable standard. When called upon to decide this issue if it is raised again in the dispositive motions phase of this proceeding, the court will follow Pickern v. Holiday Quality Foods, Inc., 293 F.3d 1133 (9th Cir. 2002) (an ADA Title III case), not Garcia v. Brockway, 526 F.3d 458 (9th Cir. 2008) (a Fair Housing Act case). The court is not persuaded by defendant's argument that

Ledbetter v. Goodyear Tire & Rubber Co., 127 S.Ct. 2162 (2007) precludes the application of Pickern in this case.

IT IS SO ORDERED.

Dated: November 7, 2008



PHYLLIS J. HAMILTON
United States District Judge